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UNIFIED DEVELOPMENT ORDINANCE*

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***Editor's note**—Printed herein is the Unified Development Ordinance for Lee County, North Carolina, adopted by the county council on Sept. 19, 2005. Amendments to the original ordinance are indicated by parenthetical history notes following amended provisions. For stylistic purposes, a uniform system of punctuation, capitalization, headings, catchlines, citation to state statutes, and expression of numbers in text has been used to conform to the Code. Obvious misspellings have been corrected without notation and material in brackets [] has been added for clarity.

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ARTICLE 1. GENERAL PROVISIONS

Summary: This article provides an introduction to the structure and the legal framework of the Unified Development Ordinance (the "UDO"). The UDO combines the zoning and subdivision authority of the County of Lee into one document. This section recites applicable statutory authority, the applicability of the UDO to various uses of the County of Lee, consistency with the Comprehensive Plan, coordination with other regulations, the effective date, violations, and related matters.

1.1. General provisions.

1.1.1 *Title.* This ordinance shall be known and may be cited as the Unified Development Ordinance (hereinafter "the ordinance"). This ordinance may also be known and may be referred to as the "UDO."

1.1.2 *Purpose.* In accordance with G.S. § 160A-383 and 153A-341, the County of Lee (refers collectively to Lee County, City of Sanford, and Town of Broadway) hereby enact this ordinance to promote the public health, safety and general welfare of its citizens. To that end, these regulations are intended to respond uniformly and consistently to development proposals. This ordinance also attempts to provide flexibility in dealing with situations that may fall outside typical processes and requirements. The elements that make up the Ordinance are interrelated and cannot be taken in isolation; they must be taken within the context and intent of the entire ordinance. Specifically, the purposes of this ordinance are described in subsections 1.1.3 and 1.1.4, below.

1.1.3 *Zoning regulations.* Zoning regulations are included in Articles 3 and 4 of this ordinance. Pursuant to G.S. §§ 160A-383 and 153A-341, the power of zoning is exercised in order to implement the Comprehensive Plan, and:

- To lessen congestion in the streets;
- To secure safety from fire, panic, and other dangers;
- To promote health and the general welfare;
- To provide adequate light and air;
- To prevent the overcrowding of land;
- To avoid undue concentration of population;
- To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- To protect and/or to enhance the character of each zoning district and its peculiar suitability for particular uses;
- To conserve the value of buildings; and
- To encourage the most appropriate use of land throughout the planning areas.

1.1.4 *Subdivision regulations.* Subdivision regulations are included in Article 6. Pursuant to G.S. §§ 160A-372 and 153A-331, the power of subdivision control is exercised in order to:

- Implement the goals of the Comprehensive Plan;
- Provide for the orderly growth and development of the County of Lee and for the efficient use of our resources (land, water, roads, etc.);
- Provide for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the neighborhood and/or for residents within the immediate area;
- Provide for the dedication or reservation of and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. § 136-66.10 or G.S. 136-66.11;

- Provide for the distribution of population and traffic in a manner that will avoid congestion and overcrowding;
- Provide for the distribution of population and traffic that will enhance public health, safety, and the general welfare;
- Provide that sufficient data is presented accurately by subdividers to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines;
- Provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal or county policies and standards and, to assure compliance with these requirements, by requiring the posting of bonds or any other method that will offer guarantee of compliance;
- Provide for the reservation of school sites in accordance with comprehensive land use plans approved by the County of Lee School Board.
- Require the preparation and recording of a plat whenever any subdivision of land takes place;
- Provide that a developer may offer funds for the County of Lee to acquire recreational land to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area; and
- To provide that, in lieu of required street construction, a developer may be required to provide funds for the County of Lee to construct roads that serve the neighborhood and these funds may be used for roads which serve the neighborhood.

1.1.5 *Authority.* The City of Sanford, Town of Broadway, and Lee County are authorized by the North Carolina General Statutes ("G.S.") to exercise broad powers in the regulation of zoning, planning, subdivision of land, and building. The County of Lee through the UDO intends to use all powers provided by virtue of Article 19 of Chapter 160A (§§ 160A-360 to 160A-459) and Article 18 of Chapter 153A (§§ 153A-320 to 153A-390) of the N.C.G.S. The UDO also uses specific powers granted in other Sections of the G.S. relating to particular types of development or particular development issues, including but not limited to right-of-way preservation, sedimentation control, watershed protection, historic preservation, and beautification and urban design.

1.1.6 *Applicability.*

1.1.6.1 *Generally.* The ordinance shall apply to all public buildings and private land(s), and use(s) thereon over which the agency has jurisdiction under the constitution(s) and law(s) of the State of North Carolina and of the United States, including any areas within the jurisdiction of a municipality pursuant to G.S. § 160A-360 or a county pursuant to G.S. § 153A-320. Pursuant to G.S. §§ 160A-392 and 153A-347, each provision of this UDO is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

1.1.7 *Permits and certificates.* No development activity shall occur on any property within the jurisdiction of this ordinance until all applicable permits, approvals and certificates have been issued and approved by the appropriate officials.

1.1.8 *Severability.* It is hereby declared to be the intent of the City of Sanford, Town of Broadway, and Lee County Governing Bodies that the provisions of this ordinance shall be severable. If any provision is declared invalid by a court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that provision or provisions which are expressly stated in the decision to be invalid; and such decision shall not affect, impair or nullify this ordinance as a whole or any other part thereof, but the rest of the ordinance shall continue in full force and effect.

1.1.9 *Fees.* The governing bodies of the County of Lee may establish any administrative fees necessary to enforce the zoning ordinance. Such fees shall be limited to the reasonable costs of administering and processing applications for development approval. No permit shall be processed, and no permit shall be considered to be submitted, until all applicable administrative fees have been paid.

1.1.10 *Coordination with other regulations.* The use of buildings and land within the County of Lee shall be subject to all other regulations as well as this ordinance, whether or not such other provisions are specifically referenced in this ordinance. References to other regulations or provisions of the ordinance are for the convenience of the reader; lack of a cross reference should not be construed as an indication that other regulations do not apply.

(Ord. of 9-19-2005)

1.2. Exemptions and special considerations.

1.2.1 *Vested rights.* The provisions of this UDO shall not apply to any development or aspect of development with vested rights or nonconforming uses, subject to the provisions of Article 13 of the UDO. The provisions of this UDO shall not apply to:

- (1) A validly approved statutory vested right (including a currently effective site specific development plan or preliminary plat approved pursuant to G.S. §§ 160A-385.1 and 153A-344.1 prior to the effective date of this ordinance provided); or
- (2) A judicially established common law vested right where (1) the owner has made substantial expenditures; (2) the expenditures were made in good faith; (3) the expenditures were made in reliance on valid government approval, if such was required; and (4) the owner would be harmed with a vested right. [ref. *Browning-Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment*, 126 N.C. App. 168, 171-72, 484 S.E. 2d 411, 414 (1997)]

1.2.2 *Subdivisions.* The provisions of this ordinance apply to any subdivision of land as defined pursuant to G.S. §§ 160A-376 and 153A-335. The provisions of this ordinance do not apply to any subdivision of land exempt pursuant to G.S. § 160A-376 (within the incorporated areas of the County or extraterritorial jurisdiction) or § 153A-335 (within the unincorporated areas of the county). The department of community development (hereinafter known as the "department") of the County of Lee can be contacted for further information about the use of this ordinance.

1.2.3 *Farms.* Within the unincorporated areas of Lee County that are not within the extraterritorial jurisdiction of the City of Sanford or the Town of Broadway, the provisions of this ordinance do not apply to any property used for bona fide farm purposes except where permitted by G.S. § 153A-340.

1.2.4 *Public lands and public enterprises.* Pursuant to G.S. §§ 160A-392 and 153A-347, no land owned by the State of North Carolina may be included within an overlay district or a conditional use district without approval of the council of state.

1.2.5 *Development under prior regulations.*

1.2.5.1 *Violations continue.* See § 1.6.4, below.

1.2.5.2 *Nonconformities under prior ordinance.* Any legal nonconformity under a previous zoning or subdivision ordinance also will be a legal nonconformity under this ordinance, so long as the situation that resulted in the legal nonconforming status under the previous ordinance or under this ordinance continues to exist. If a legal nonconformity under the previous ordinance becomes conforming because of the adoption of this ordinance, then said use or structure will no longer be considered a nonconformity.

1.2.5.3 *Conditional rezoning.* The classification of a parcel pursuant to the official zoning map of this ordinance shall not constitute an amendment or variation of any conditions created pursuant to a conditional rezoning approved prior to the effective date of this ordinance. The landowner or applicant for development approval shall remain subject to all such conditions unless amended.

(Ord. of 9-19-2005)

1.3. Comprehensive Plan.

Pursuant to G.S. §§ 160A-383 and 153A-341, this ordinance is intended to implement the goals, objectives, and policies of the Comprehensive Plan. Any amendments to, or actions pursuant to the ordinance should be consistent with the applicable Comprehensive Plan. The Comprehensive Plan may be amended, and the UDO will reflect those amendments. Any amendment to the UDO should conform to the goals of the Comprehensive Plan. Any amendment to the zoning map should be consistent with the future land use map contained in the Comprehensive Plan. However, the governing bodies shall have the discretionary authority to approve amendments to the UDO text or zoning map that may not be consistent with the Comprehensive Plan if extraordinary circumstances exist.

The Sanford/Lee County 2020 Land Use Plan, adopted by Lee County on May 3, 1999, and by the City of Sanford and Town of Broadway on May 4, 1999 and all future amendments, is hereby designated the "Comprehensive Plan" for purposes of this ordinance.

(Ord. of 9-19-2005)

1.4 Interpretation of the provisions of this ordinance.

1.4.1 *Interpretation and application of provisions.* The provisions of this ordinance are the basic and minimum requirements for the protection of public health, safety, and welfare. As provided by G.S. §§ 160A-4 and 153A-4, this ordinance shall be broadly construed in order to further its underlying purposes. In all cases, the highest standards will be applied. The meaning of any and all words, terms or phrases in this ordinance may be found in Appendix A.

1.4.2 *Text controls over graphics.* This ordinance contains numerous graphics, pictures, illustrations, and drawings. However, text of this ordinance shall control unless otherwise provided in the specific section.

(Ord. of 9-19-2005)

1.5 Effective date.

This ordinance shall become enforceable and shall take effect when it is codified, filed and indexed in accordance with G.S. §§ 160A-77 or 160A-78 and 160 A-79(d) within the incorporated area of the county, the ETJ, and §§ 153A-49 and 153A-50 within the unincorporated area of the county. Unless clearly subordinated to another ordinance, regulation, resolution, or express policy, this ordinance shall, on the effective date, prevail over any such conflicting or inconsistent ordinance, regulation, resolution, or express policy to the extent necessary to give this ordinance full force and effect. The prior zoning and subdivision ordinances or regulations of Lee County, the City of Sanford, and the Town of Broadway are hereby repealed except to the extent whereby continuing activities or violations regulated by previous ordinances are being administered (see subsection 1.6.4, below).

(Ord. of 9-19-2005)

1.6 Violations of this ordinance.

1.6.1 *Applicability.* Unless otherwise specified in other sections of this ordinance, this section shall set forth penalties and remedies for violations of this ordinance.

1.6.2 *Appeal.* An appeal of a violation or decision of the department of community development, shall be to the board of adjustment in accordance with section 3.7 of this ordinance.

1.6.3 *Types of violations.* Any of the following is a violation of this ordinance and shall be subject to the remedies and penalties provided for in this ordinance:

1.6.3.1 To place any use, structure, or sign upon land that is subject to this ordinance without all of the approvals required by this ordinance.

1.6.3.2 It is a Class I misdemeanor to subdivide land in violation of this ordinance or transfer or sell land by reference to, exhibition of, or any other use of an unapproved plat. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The County of Lee may bring an action for injunction of:

- Any illegal subdivision
- Transfer of land • Conveyance of land • Sale of land

1.6.3.3 To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building, structure or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign or other regulation of this ordinance. This section is not intended to address legal nonconforming uses or structures. Article 12 of this ordinance shall regulate expansions or other alterations to legal nonconforming uses or structures.

1.6.3.4 To engage in any subdividing, development, construction, remodeling or other activity of any nature upon land that is subject to this ordinance without all of the approvals required by this ordinance.

1.6.3.5 To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity.

1.6.3.6 To violate, by act or omission, any term, condition, or qualification placed by a decision-making body upon any permit or other form of authorization.

1.6.3.7 To reduce or diminish any lot area so that the setbacks or open spaces shall be smaller than prescribed by this ordinance.

1.6.3.8 To increase the intensity of use of any land or structure, except in accordance with the procedural requirements and substantive standards of this ordinance.

1.6.3.9 To remove, deface, obscure or otherwise interfere with any notice required by this ordinance.

1.6.3.10 To fail to remove any sign or other improvement installed, created, erected, or maintained in violation of this ordinance, or for which the permit, approval, permission, or other authorization has lapsed. This section is not intended to address legal nonconforming uses or structures. Article 12 of this ordinance shall regulate expansions or other alterations to legal nonconforming uses or structures.

1.6.3.11 To otherwise undertake any development or to establish any use in a manner which does not comply with this ordinance.

1.6.4 *Continuing violations.*

1.6.4.1 Each day that a violation remains uncorrected after receiving proper notice shall constitute a separate violation of this ordinance.

1.6.4.2 Any violation of the zoning, subdivision, flood prevention, sedimentation and erosion control ordinances in effect prior to the adoption of this ordinance shall continue to be a violation under this ordinance, and is subject to penalties and enforcement under this section unless the use, development, construction, or other activity complies with the provisions of this ordinance.

1.6.4.3 Nothing in this ordinance shall prohibit the continuation of previous enforcement actions, undertaken by the County of Lee pursuant to previous and valid ordinances and laws.

1.6.5 *Civil remedies and enforcement powers.* Failure to comply with any provision of this ordinance is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this ordinance:

1.6.5.1 *Withhold permit.* The department of community development may deny or withhold all permits, certificates, or other forms of authorization on any land or structure or improvement owned or being developed by a person if there is:

- (a) An uncorrected repeat violation of this ordinance; or
- (b) There is a condition or qualification of approval granted by the decision-maker that has not been met.
- (c) The provisions of this section shall apply only to violations or unmet conditions that occur on the same property for which the permit or other approval is sought.

1.6.5.2 *Revoke permits.* Any development permit or other form of authorization required under this ordinance may be revoked for any reason set forth in subsection 1.6.3, and in G.S. §§ 160A-422 and 153A-362. The revocation hearing shall be conducted in accordance with section 1.6.5.4 of this ordinance.

1.6.5.3 *Stop work.* With or without revoking permits, the department of community development may stop work on any land or structure on any land on which there is an uncorrected violation of a provision of this ordinance or of a permit or other form of authorization issued hereunder, in accordance with the power to stop work pursuant to G.S. §§ 160A-421 and 153A-361. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed.

1.6.5.4 *Revoke plan or other approval.* Where a violation of this ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the department of community development may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected), revoke the plan approval pursuant to G.S. §§ 160A-422 or 153A-362. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

- (a) *Grounds for revocation.* The following shall be considered grounds for revocation of a permit:
 - The applicant intentionally supplies misleading information. The provision of information is considered "intentional" when the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.
 - The failure to comply with any condition of a development order or development permit.
- (b) *Decision and notice.* The department of community development shall render a decision to revoke the permit, to allow the applicant to retain the development permit, or to reconsider the permit. the department of community development shall notify the holder of the permit in the manner provided in G.S. §§ 153A-362 or 160A-422, as appropriate. If the department of community development finds that any portion of this chapter is being violated, it shall notify the responsible owner or tenant or other party (the initial written notice may be the final notice) requesting correction of the violation within ten days of the date of receipt of the notice by one or more of the following methods:
 - Notice may be given by registered mail or certified mail. When service of notice is given by this method, notice may also be sent by regular mail. Service shall be deemed complete if the

registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within ten days after the date mailed. If regular mail is used, notice of the violation shall also be posted in a conspicuous place on the affected premises.

- Notice may be given by personal service. Such service shall be accomplished by delivering the notice to the responsible owner or tenant or other party or their authorized agent at their dwelling house or usual place of abode or to their business address and leaving it with the responsible party or some person of suitable age and discretion abiding therein. An affidavit shall be prepared showing how, when, where, and to whom the notice was served.

- Notice may be given by publication in a newspaper having general circulation in the Sanford area at least once and no later than the time at which personal service would be required under the provisions of this article. This method of service may be used when the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained in the exercise of reasonable diligence. An affidavit shall be prepared to this effect and notice of the violation posted in a conspicuous place on the affected premises.

(c) *Effect and appeals.* The decision of the department of community development may be appealed as set forth in section 3.7 of this ordinance. Unless appealed, a decision to revoke a development permit shall become final 30 days after the date the decision is rendered. After that, any further activities based on the permit shall be deemed to be in violation of this ordinance and shall be subject to the remedies as prescribed in section 1.6 of this ordinance.

(d) *Right cumulative.* The right to revoke a development permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

1.6.5.5 *Injunction and abatement.* This ordinance may be enforced by any means or any remedy provided for in G.S. §§ 160A-175, 160A-389, 153A-123, and 153A-324. An action for injunction of any illegal subdivision, transfer, conveyance, or sale of land may be prosecuted by the department of community development or his designee pursuant to G.S. §§ 153A-334 and 160A-375.

1.6.5.6 *Other remedies.* The department of community development, County of Lee, planning commission and the board of adjustment shall have such other remedies as are, and as may be from time to time, provided by North Carolina law for the violation of zoning, subdivision, sign or related ordinance provisions.

1.6.6 *Penalties for violation.*

1.6.6.1 *First offense.* Any violation occurring once within a 12-month period shall be considered a first offense. An appeal of the department of community development's decision shall be allowed as prescribed under subsection 1.6.2. A notice shall be sent to the violator indicating that the violation exists and that the violation shall be remedied within ten days without penalty. The notice shall also indicate that upon the expiration of the ten-day warning period, the violator shall be subject to a civil penalty of \$100.00 for each day that the violation remains on the property. Should a violation continue to exist by the 30th day of the original notification, the County of Lee shall seek to recover the penalty together with all costs by filing a civil action in the District Court in the nature of a suit to collect a debt. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in subsection 1.6.5 of this section.

1.6.6.2 *Repeat offense.* Any violation that incurred assessed fines reoccurring on the same property by the same violator more than once within a 12-month period shall be considered a repeat offense provided the reoccurrence is a violation of the same article of this ordinance. A notice shall be sent to the violator indicating that the violation exists and that the violation shall be remedied within two days without penalty. The notice shall also indicate that upon the expiration of the two-day warning period, a notice of violation shall be issued by the department of community development and shall have an immediate

civil penalty of \$100.00. For each day the repeat violation remains, the violator shall be subject to a civil penalty of \$100.00. Should a violation continue to exist by the 30th day of the original notification, the County of Lee shall seek to recover the penalty together with all costs by filing a civil action in the general court of justice in the nature of a suit to collect a debt. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in subsection 1.6.5, above.

1.6.7 *Other powers.* In addition to the enforcement powers specified in this section, the County of Lee may exercise any and all enforcement powers granted by North Carolina law.

1.6.8 *Remedies cumulative.* The remedies and enforcement powers established in this article shall be cumulative, and the County of Lee may exercise them in any order.

1.6.9 *Enforcement procedures.* The purpose of this section is to provide procedures for enforcing this ordinance pursuant to city and county zoning and police power authority including, but not limited to, G.S. §§ 160A-365, 160A-389, 160A-175, 160A-421, 160A-422, 160A-432, 153A-324, 153A-123, 153A-361, 153A-362, and 153A-372.

1.6.9.1 *Non-emergency matters.* In the case of violations of this ordinance that do not constitute an emergency or require immediate attention, the department of community development shall give notice of the nature of the violation to the property owner or any applicant for any relevant permit. Notice shall be given in person, by certified mail, or by posting notice on the premises. Notice may be given by publication where the applicant fails to respond to personal notification within ten days. Notices of violation shall state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

1.6.9.2 *Emergency matters.* In the case of violations of this ordinance that constitute an emergency situation resulting in an immediate threat to the health, or safety of the public, or violations that will create increased problems or costs to the public for the provision of County of Lee services if not remedied immediately, the department of community development may use the enforcement powers available under this article without prior notice, but the department of community development shall attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who can be contacted and has an identifiable relationship to the violation and/or owner.